

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

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**UNITED STATES OF AMERICA, for Itself)
and as Trustee for the Zuni Indian Tribe,)
Navajo Nation and Ramah Band of Navajos)**

and)

**STATE OF NEW MEXICO, *ex rel.* STATE)
ENGINEER,)**

Plaintiffs,)

and)

**ZUNI INDIAN TRIBE,)
NAVAJO NATION,)**

Plaintiffs-in-Intervention)

v.)

**STATE OF NEW MEXICO COMMISSIONER)
of PUBLIC LANDS)**

and)

A & R PRODUCTIONS, *et al.*,)

Defendants.)

**01CV00072 BDB/WWD(ACE)
ZUNI RIVER STREAM
SYSTEM ADJUDICATION**

**CONDITIONAL DISCLAIMER OF INTEREST AND
MOTION TO DISMISS BY TRI-STATE GENERATION
AND TRANSMISSION ASSOCIATION, INC.**

Subject to and conditioned upon the entry in this action of an order of dismissal substantially in the form attached hereto as Exhibit "A". Tri-State Generation and Transmission Association, Inc. ("Tri-State") (successor in interest by merger to Plains Electric Generation and

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Transmission Cooperative, Inc., improperly named in the Complaint and Amended Complaint as Plains Electric C&T Coop., Inc.), because it does not use or presently claim a right to the use of surface or groundwater within the geographic boundaries of the Zuni River Basin described below, herewith disclaims any and all interest in the use of the surface and groundwater within the geographic boundaries of the Zuni River Basin, as that Basin is described in the Court's May 21, 2003 Order On Special Master's Report re Geographic Scope of Adjudication, as follows:

The adjudication boundaries lie within the surface water drainage basin as depicted on the map dated December 2002 attached to the January 6, 2003 United States' Identification of Zuni River Stream System Boundary (No. 156) and as described in the January 14, 2003 Supplemental Identification of Zuni River Stream System Boundary (No. 158). Special Master's Report at pp. 10-11. The groundwater diversions which lie within the surface boundaries shall be included in the adjudication. The groundwater considered shall be limited to that which lies within the surface boundaries, as though their lines were drawn vertically through the earth. The surface boundaries shall not overlap those of any other adjudication.

This Conditional Disclaimer and Motion to Dismiss is not intended to and does not prejudice the right of Tri-State and/or any successor-in-interest to acquire hereafter existing surface and groundwater rights within the geographic boundaries of the Zuni River Basin or to petition the State Engineer for a change in place and/or purpose of use and/or point(s) of diversion of such rights, to petition the State Engineer in the future for a permit for a new appropriation of water in the Zuni River Basin to beneficially use surface and/or groundwater or to petition the State Engineer with similar petitions nor does it preclude the State Engineer from granting Tri-State and/or any successor-in-interest such petitions and a right to beneficially use the surface and/or groundwater in the Zuni River Basin. It is understood that the priority date of any water right permit for a new appropriation of water hereafter granted to Tri-State and/or any successor-in-interest to beneficially use surface and/or groundwater in the Zuni River Basin under the laws of the State of New Mexico cannot be earlier than the date of this Conditional

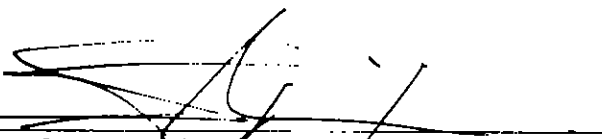
Disclaimer and Motion to Dismiss.

Because this Motion to Dismiss is relevant only to the determination of the rights of an individual defendant as between it and the plaintiffs, pursuant to the Administrative Order Establishing Motion Practice and Procedure entered in this action on March 27, 2003, concurrence was sought only from, and this Conditional Disclaimer of Interest and Motion to Dismiss has been served only upon, the persons listed in the Certificate of Service accompanying it. Counsel representing the Office of the State Engineer and the United States, as plaintiffs, and the Navajo Nation, as plaintiff-in-intervention, do not object to this Motion to Dismiss. Counsel for the Zuni Indian Tribe, as plaintiff-in-intervention, objects to this Motion to Dismiss.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: _____


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